IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GORDON ROY PARKER, Plaintiff, vs. LEARN THE SKILLS CORP., ET AL. Defendants.	Civil Action Case No. 05-cv-2752

DEFENDANT LEARN THE SKILLS CORP.'S MEMORANDUM OF LAW IN SUPPORT OF ITS CROSS-MOTION TO DISMISS PURSUANT TO FED.R.CIV.P. 12(B)(6) AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR DEFAULT

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II. PROCEDURAL HISTORY

On December 30, 2003, *pro se* Plaintiff Gordon Roy Parker filed an action against pro se Defendant Geiger, Defendant Learn The Skills Corporation ("LTSC"), and one-hundred anonymous defendants. Plaintiff's Amended Complaint seeks relief under theories of Libel, Trade Libel, Invasion of Privacy, Copyright Infringement, Unfair Competition, Unjust Enrichment, Tortious Interference and Civil Conspiracy, and for Federal Lanham Act and RICO Violations. That case was filed in this Court under civil case number 03-6936.

Plaintiff filed an Amended Complaint which was met with several motions by several parties, including a motion by defendant Geiger seeking a more definite statement. Ultimately, the Court only ruled on Geiger's motion which dismissed the Amended Complaint and required the Plaintiff to file any second amended Complaint within 30 days. Defendant filed a second Amended Complaint which was subsequently dismissed by the Court as well. Plaintiff then filed the current Complaint on June 9, 2005, 6 months after civil case 03-6936 was dismissed.

Plaintiff claims to have served defendant LTSC by mail on September 1, 2005. He also claims to have served LTSC through its corporate registered agent on September 30, 2005. Defendant LTSC concedes that it was served through its registered agent on September 30, 2005. The affidavit of service on LTSC does not indicate the address that the overnight mail was sent. There is no evidence that the address used by the Plaintiff for the September 1, 2005 overnight mailing was correct or that the mail was received by a proper corporate agent.

III. FACTS

Plaintiff alleges a criminal conspiracy by the "seduction mafia" against him. LTSC is among the alleged conspirators, along with an e-mail address. Plaintiff alleges causes of action against LTSC entitled "Racketeering Against All Named Defendants" (Count I), "Civil Conspiracy Against All Named Defendants" (Count II), "Tortious Interference Against Defendants LTSC/Formhandle" (Count III), "Injurious Falsehood Against Defendants Geiger, Ross, and LTSC/Formhandle" (Count VI), "Lanham Act Violations (Defendants

Formhandle/LTSC" (Count VII), "Invasion of Privacy Against Defendants Ross, Geiger and LTSC" (Count XI).

IV. LAW/ARGUMENT

A. DEFAULT SHOULD NOT BE ENTERED

1. PLAINTIFF FAILED TO EFFECTUATE SERVICE OF PROCESS UNTIL SEPTEMBER 30, 2005

The problem with the defendant's motion for default is that he completely ignores the import of Rule 424 of the Pennsylvania Rules of Civil Procedure. Rule 424 provides:

> Service of original process upon a corporation or similar entity shall be made by handing a copy to any of the following persons provided the person served is not a plaintiff in the action:
>
> (1) an executive officer, partner or trustee of the corporation or similar entity, or
>
> (2) the manager, clerk or other person for the time being in charge of any regular place of business or activity of the corporation or similar entity, or
>
> (3) an agent authorized by the corporation or similar entity in writing to receive service of process for it.

Plaintiff relies only on Rule 403 of the Pennsylvania Rules of Civil Procedure, as did the plaintiff in Light and Sound Specialties, Inc. v. Vue-More Manufacturing, 1990 WL 50568, 1990 U.S. Dist. LEXIS 4672 (Weiner J.):

> Under this rule of state procedure [403] it argues, the signing of the Postal Service's return receipt by the defendant's agent, effectuated service. This argument would be valid but for the fact that Pennsylvania does not permit original process to be served by mail upon a corporation.

In Light and Sound Specialties, this Court disagreed with the Superior Court of Pennsylvania's interpretation of Rule 424, noting that Rule 424 explicitly uses the words "shall be made by handing a copy".

Plaintiff has failed to show service in accordance with Rule 424 on September 1, 2005, and the time for a responsive pleading arising out of the service upon LTSC's registered agent on September 30, 2005, has not yet expired. As such the Court should not grant a default.

Regardless of whether the service was effective by the first delivery - which the Plaintiff has not shown in his motion for default - defendant LTSC does not contest the fact that its professional corporate registered agent was served on September 30, 2005. Only this means of service shows unambiguously that the defendant was properly served with process. Based on this service, the defendant was served with the summons and complaint and comes now before this court through counsel to make its appearance in this case. As set forth below, defendant LTSC contests whether this court has personal jurisdiction over defendant LTSC.

In the event that the court were inclined in any manner to believe that the service on September 1, 2005, was effective, defendant LTSC asks that the Court not enter default or to vacate default, as the case may be, under the principles of law governing vacating a default in this District.

The Court of Appeals has enunciated a strong policy encouraging decisions on the merits of cases and disfavoring default judgments. If it came to the issue of vacating a default, in exercising its discretion to vacate a default, a district court must consider whether vacating the default will visit prejudice upon the plaintiff, whether the defendant has meritorious defenses and whether default was the result of culpable conduct on the defendant's part. Harad v. Aetna Casualty and Surety Company, 839 F.2d 979 (3rd Cir. 1988).

Along these lines, Defendant argues that it has meritorious defenses to this action, including that this court has no personal jurisdiction over LTSC, and that its Motion to Dismiss has been timely and promptly proffered. It also avers that the Plaintiff has failed to state a cause of action, that the Complaint is frivolous, and that even if a cognizable legal cause of action has been alleged, no facts sufficient to support same have been alleged.

Furthermore, defendant LTSC has moved rapidly and timely in response to the service effectuated on September 30, 2005, without requesting additional time. When it is an issue of a few weeks between the questionable service date and the effective service date, there cannot be said to have been any prejudice to the Plaintiff.

B. THE COURT SHOULD DISMISS THIS CASE BECAUSE THERE IS NO PERSONAL JURISDICTION OVER DEFENDANT LEARN THE SKILLS CORP.

Defendant LTSC respectfully pleads with the Court to make a ruling on whether this Court has jurisdiction over LTSC so that once and for all the Plaintiff will not be able to drag LTSC into Court in this forum. The Plaintiff's repeated frivolous lawsuits are vexatious and an abusive nuisance. A ruling regarding jurisdiction would preserve the judiciary's resources by preventing the Plaintiff from further lawsuits unless he will willingly subject himself to Rule 11 sanctions (a course of action the Plaintiff intends to pursue at the favorable conclusion of this lawsuit).

Defendant LTSC incorporates by reference herein and adopts completely the concise legal arguments set forth in the Motion to Dismiss filed by Defendant Paul Ross through counsel Mary Kay Brown, Esquire, of Buchanan Ingersoll on October 11, 2005, section III (A). This is an excellent recitation of the legal standard for personal jurisdiction with an emphasis on internet activity. The only aspect of the argument which was mentioned that should be emphasized is that the Plaintiff bears the burden of showing facts to support jurisdiction by a preponderance of the evidence.

It should be noted that defendant LTSC need not necessarily come forward with an affidavit regarding its activities, or lack thereof, in or related to the Commonwealth of Pennsylvania. Indeed, any affidavit would then reveal the identities of people who would expose themselves to the vexatious litigation tactics of the Plaintiff who has stooped so low as to file a lawsuit against counsel for LTSC. Surely, this Plaintiff, who has an established track record of clearly frivolous litigation, would certainly hunt down any person who would dare challenge him and he would file a frivolous lawsuit against them. These are his demonstrated proclivities. As such, in challenging this Court's jurisdiction, defendant LTSC relies solely upon the inability of the Plaintiff to show a factual basis for jurisdiction knowing that there are no such facts, based upon the fear of reprisal should LTSC put forward an affidavit.

C. THE COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

Federal Rule of Civil Procedure 12(b)(6) permits a court to dismiss all or part of an action for "failure to state a claim upon which relief can be granted." Fed.R.Civ.P. 12(b)(6). In ruling on a 12(b)(6) motion, the Court must accept as true all well-pleaded allegations of fact, and any reasonable inferences that may be drawn therefrom, in plaintiff's complaint and must determine whether "under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Nami v. Fauver, 82 F.3d 63, 65 (3rd Cir. 1996) (citations omitted). In evaluating plaintiff's pleadings, the Court should not credit any "bald assertions." In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1429 (3rd Cir. 1997). Nor should the Court accept as true legal conclusions or unwarranted factual inferences. Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). "The complaint will be deemed to have alleged sufficient facts if it adequately put the defendant on notice of the essential elements of the plaintiff's cause of action." Nami, 82 F.3d at 65. A Rule 12(b)(6) motion is proper only if the plaintiff "can prove no set of facts in support of his claim which would entitle him to relief." Conley, 355 U.S. at 45-46.

At the outset, it should be noted that this is the fourth complaint filed by the Plaintiff against defendant LTSC. The first was filed in the matter of Parker vs. Learn the Skills Corp. This was amended by the Plaintiff and the amended complaint was the subject of the Court's memorandum and order dated October 25, 2004. Plaintiff's Amended Complaint was dismissed by the Court for failure to conform with Fed.R.Civ.P. 8(a). Plaintiff was given a month to come up with a more concise statement in support of his claims. At the time, defendant LTSC had two motions pending which were dismiss as moot on account of the Rule 8(a) dismissal. A copy of the Court's order and memorandum are attached hereto for the Court's convenience.

Plaintiff timely filed a third amended complaint, however, by order dated December 3, 2004, the Court dismissed that complaint without prejudice on the following basis:

> Beyond the first glance, however, it is the lack of any cogent or plain statement that dooms Plaintiff's Second Amended Complaint. For each of the individual Counts, Plaintiff states conclusory legal elements or cross-references a

> laundry list of allegedly offensive comments without tying the two together in a decipherable way. Only super-human patience would allow defendants to discern the relevance of each alleged fact to their potential defense. Despite the complexity of Plaintiff's claims, Plaintiff must give the defendants in this matter notice and the ability to properly respond to the claims brought against them. Plaintiff has failed to conform his amended pleading to the demands of Rule 8(a)(2) as instructed by this Court's October 25, 2004, Memorandum and Order. See Footnote 1.

A copy of the Court's December 3, 2004, order is attached hereto for the Court's convenience.

According to the Court's October 25th Memorandum, the Plaintiff's First Amended Complaint was 80 pages with 320 paragraphs. The Court's December 3rd order dismissing the Second Amended Complaint notes the potential for improvement on the part the Plaintiff:

> At first glance, Plaintiff has improved upon the eighty page First Amended Complaint (Doc. No. 2). In Plaintiff's Second Amended Complaint, he was able to omit twenty-eight pages and over ninety-eight anonymous defendants. Plaintiff was also able to label individual claims for relief against just two defendants.

The Plaintiff's Second Amended Complaint was 52 pages with 195 paragraphs and that was deemed to be excessive and requiring "super human patience". Even though this was an improvement, the Court dismissed the Second Amended Complaint.

Out of a total lack of respect for the authority of the Court - and in complete disregard for the rights of the litigants - the Plaintiff has filed the current Complaint which weighs in at a hefty 74 pages, 257 numbered paragraphs, with both single-spaced and double-spaced paragraphs, as well as page after page of subparagraphs (paragraph 34 consists of nine pages, paragraph 77 has three pages of subparagraphs). While the last lawsuit was dismissed without prejudice, it was precisely because the pleading was voluminously incomprehensible that it was dismissed. The current Complaint contemptuously ignores the Court's previous rulings.

Fed.R.Civ.P. 8(a)(2) requires a complaint to include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2); accord Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U .S. 163, 168 (1993). Plaintiff is "required to 'set forth sufficient information to outline the elements of his claim or to permit inferences to be drawn that these elements exist.' " Kost v. Kozakiewicz, 1 F.3d 176, 183 (3rd Cir.1993) (quoting 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1357, at 340 (2d ed.1990)). The Court "must determine whether, under any reasonable reading of the pleadings, the plaintiff[ ] may be entitled to relief, and ... must accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom." Nami, supra, at 65 (citing Holder v. Allentown, 987 F.2d 188, 194 (3rd Cir. 1993)); Eli Lily & Co. v. Roussel Corp., 23 F. Supp.2d 460, 474 (D. N.J. 1998) (citing Nami and Holder).

A *pro se* complaint is held to less stringent standards than formal pleadings drafted by lawyers. Estelle v. Gamble, 429 U.S. 97, 106 (1976); Haines v. Kerner, 404 U.S. 519, 520 (1972); Then v. Quarantino, 208 F.3d 206 (3rd Cir. 2000). "Under our liberal pleading rules, during the initial stage of litigation, a district court should construe all allegations in a complaint in favor of the complainant" and give "credit to the allegations of the complaint as they appear[ ] in the complaint." Gibbs v. Roman, 116 F.3d 83, 86 (3rd Cir. 1997); see also Kulwicki v. Dawson, 969 F.2d 1454, 1462 (3rd Cir. 1992). But, as noted above, a court need not credit a complaint's "bald assertions" or "legal conclusions" when deciding whether dismissal is appropriate. Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3rd Cir. 1997); see also Fernandez-Montes v. Allied Pilots Ass'n, 987 F.2d 278, 284 (5th Cir. 1993) ("[C]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss."). "When it appears beyond doubt that no relief could be granted under any set of facts which could be proved consistent with the allegations of the complaint, a dismissal pursuant to Rule 12(b)(6) is proper." Robinson v. Fauver, 932 F.Supp. 639, 642 (D. N.J. 1996) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

The problem with the Plaintiff's Complaint is that he leaps from insults against him to the legal conclusion that there is a cause of action that he can assert in a court of law. Based on the assumption that any of what the Plaintiff alleges makes any sense, it appears that he is alleging that there is a criminal conspiracy against him which underlies his civil racketeering claim and other claims. As to all of the claims against all of the parties (a statement which Plaintiff will allege is in furtherance of this conspiracy) it only appears that everything he alleges amounts to the following: First, that there is protected free speech in where people may be resorting to hyperbole in criticizing the Plaintiff. Insults, however, no matter how base, cannot form the basis for the claims that the Plaintiff has asserted in the case at bar.

The sum and substance of the current complaint is that the Plaintiff extracts from insults in cyberspace an inference that he has legal claims against the people who are involved in any way with making those statements. This is the kind of bald conclusory allegation which deserves no substantive credit. For instance, in paragraph 77(ad) on page 35 to 37 of the Complaint, Plaintiff claims:

> 77. Like Defendant Ross, Defendants Formhandle/LTSC made numerous statements themselves which were relevant to this action, including:
>
> ad. "You are not a [business] competitor. You are, however, an annoying fuckwit and a poo-poo head." (November 19, 2004 to ASF).

This is a typical kind of statement found in the Plaintiff's Complaint. The Plaintiff was called an "annoying fuckwit" and "poo-poo head" by someone in cyberspace (which is only assumed to be true because that is required by the standard for a Rule 12(b)(6) motion) which is shameful, immature, childish, socially inexcusable, impolite, and inappropriate. No one deserves to be insulted in this manner. But these kinds of insults cannot form the basis for a lawsuit under any of the causes of action asserted by Plaintiff.

V. CONCLUSION

Defendant Learn the Skills Corp. prays and requests that the Court will not only deny the Motion for Default[1] but the Court will dismiss the Complaint as to Learn the Skills Corp. on the basis that the Court does not have personal jurisdiction - either general or specific - over Learn the Skills Corp.

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[1] It should be noted that LTSC takes no position on the Plaintiff's attempt to sue an e-mail address. However, such conduct is demonstrative of the lack of regard the Plaintiff has for the Court system. An e-mail address is nothing more than an electronic post office box. The Plaintiff alleges that the e-mail address is actually a person. Yet, if this is true, he must serve that person pursuant to Fed.R.Civ.P. 4(e), assuming such a person exists. Plaintiff's effort in this regard is akin to suing a post office box as though such a thing were properly subject to a lawsuit. Plaintiff has made no showing that

In the event that Plaintiff is able to satisfy the burden of showing that the Court does have personal jurisdiction over Learn the Skills Corp., then the Court should, in the alternative, dismiss the Complaint as to it because the Plaintiff has repeatedly failed to reduce his claims to comprehensible claims and that giving the claims the most interpretational leniency possible, the Counts of the Complaint against Learn the Skills Corp. fail to state a claim upon which relief may be granted.

Respectfully,

Matthew S. Wolf

cc: Learn the Skills Corp.
Mary Kay Brown, Esquire
Dennis G. Young, Jr., Esquire
Gordon Roy Parker, *pro se*

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the e-mail address named as a defendant has the capacity to be sued, let alone to ask that a default judgment be entered against it. And assuming that the e-mail address is an individual, service by mail to some business address would be wholly improper. Permitting this Plaintiff to proceed against an e-mail address (in essence allowing default to be entered against a fictitious defendant) would only encourage the Plaintiff to blaze a new trail of suing e-mail addresses throughout the country.